

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7786 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AJAY LOKNATH SATIJA

Versus

STATE OF GUJARAT

Appearance:

MR DK DESAI for Petitioners
MR SK PATEL, Learned APP for Respondent No. 1
MR AJ SHASTRI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/09/2000

ORAL JUDGEMENT

1. The present petition has been filed under Section
482 of the Criminal Procedure Code, 1973 by the

petitioners for quashing Criminal Case No. 704 of 1999 filed by the contesting respondent no.2 for offences punishable under Sections 323, 504, 506(1) read with Section 114 of the Indian Penal Code. It has been alleged by the present petitioners that the aforesaid criminal case has been filed by the second respondent against the petitioners for bringing pressure on them to settle earlier criminal case filed by the second respondent against the members of the family of the petitioners. That there is a delay in filing the complaint and therefore the present petition be allowed and the aforesaid criminal case be quashed and set aside.

2. On receiving the petition, rule was issued. Mr. A.J.Shashtri has filed his appearance on behalf of contesting respondent. Mr. S.K.Patel, learned APP also appears for State. I have heard learned advocates for the parties and have perused the papers.

3. The learned advocate for the petitioners has contended that there is a delay in filing complaint and therefore the complaint may be treated to be false. The complaint has been filed by the second respondent for offences punishable under Section 323, 504, 506(1) read with Section 114 of the Indian Penal Code. The offences are said to have been committed on 25.5.1999 at 7.00 p.m. and the complaint has been filed on 2.6.1999. It has been further contended that there is a delay of about a week. It is no ground for quashing and setting aside the complaint because there is a delay of six days in filing the complaint. After all, the second respondent has filed previous complaint against the brother of the first petitioner and the son of the second petitioner relating to a previous offence by Criminal Case No. 650 of 1999. Therefore, the second respondent will naturally take sometime for considering as to whether or not the criminal complaint be filed against the petitioners. Therefore, time taken in filing the complaint cannot be treated a ground for quashing the same. It has also been contended that no F.I.R. was filed by the contesting respondent. The argument that normally the people would first go to the police station and file complaint there, and if the F.I.R. not registered they would come to the Court and file complaint before the Court. Law does not provide that the above process has to be followed. It is the right of the complainant to decide as to whether to file complaint before the Court or to file F.I.R. before the police station. If the second respondent opted to file complaint before the Court then complaint cannot be quashed on the ground that F.I.R. has not been filed by the second respondent.

4. It has also been contended that complaint has been filed by the second respondent with a view to pressurize the petitioners, so that they may settle earlier criminal case no. 560 of 1999. Now, firstly, the petitioners are not party to the said criminal case no. 560 of 1999. Then that offence relates to one under section 420 of the Indian Penal Code. Then it is significant to note that the said complaint has been filed by the second respondent against the brother and son of the petitioners. Therefore, if the pressure is to be brought to settle the earlier complaint it would be for the petitioners to bring pressure and not by the respondent. It therefore cannot be said that the complaint has been filed with an ulterior motive to bring pressure on the petitioners to settle earlier criminal case. It has also been contended that two petitioners were not present at the time of event at a place where it is said to have been committed. It is further contended that one of the petitioners is serving at Delhi in a Medical Store and another petitioner was not present there. Some documents were brought on record in order to show that the petitioners were not present at the time of offence when it is said to have been committed. This would be a matter of defence and petitioners will be at liberty to adduce evidence before the Trial Court as and when the trial proceeds. Moreover, the documents cannot be read in isolation. They are required to be proved in accordance with the provisions of the Evidence Act. Unless the documents are proved they cannot be relied upon by this Court. It is more so when these documents were not produced along with this petition. The other side has not been provided with an opportunity to meet with the aforesaid documentary evidence.

5. Though the petitioners have contended during the course of arguments that they were not present at Surat at the time of alleged offence but this point has not been taken up in the petition and, therefore, it is not possible for this Court to appreciate the said position in absence of any ground of this nature taken by the petitioners in the petition itself.

6. The learned advocate for the petitioner has not been able to show that if the complaint is read as a whole no offence is made out. In fact, the respondent has alleged that the petitioners had beaten him and had also given threats and abuses. Now, when these allegations are read as they stand it cannot be said that no offence has been made out. Therefore offence are made out from the bare perusal of the complaint and, therefore, merely on the

aforesaid reasons complaint cannot be quashed. This shows that there is no merit in the petition and petition is required to be dismissed. It is found that the present petition has been filed without any reason by the petitioners and they have unnecessarily brought the contesting respondent before this Court. Therefore, the present petitioners should pay appropriate costs. In the aforesaid view of the matter, present petition is ordered to be dismissed. Rule is discharged. Petitioners are directed to deposit an amount of Rs. 1000/- in this court and on such deposit Rs. 500/- be paid to the second respondent and Rs. 500/- to the High Court Legal Aid Committee in accordance with the provisions contained in Legal Service Authority Act, 1987.

(D.P.Buch,J)

(vipul)